

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF ILLINOIS)	
)	
Petition for a Certificate of Public Convenience and)	
Necessity, pursuant to Section 8-406.1 of the Illinois Public)	
Utilities Act, and an Order pursuant to Section 8-503 of the)	
Public Utilities Act, to Construct, Operate and Maintain a)	Docket No. 12-0598
New High Voltage Electric Service Line and Related)	
Facilities in the Counties of Adams, Brown, Cass,)	
Champaign, Christian, Clark, Coles, Edgar, Fulton, Macon,)	
Montgomery, Morgan, Moultrie, Pike, Sangamon, Schuyler,)	
Scott and Shelby, Illinois.)	

**AMEREN TRANSMISSION COMPANY OF ILLINOIS' BRIEF IN RESPONSE
TO THE ADMINISTRATIVE LAW JUDGE RULING OF MAY 3, 2013**

On May 3, 2013, the Administrative Law Judges (“ALJs”) issued a ruling in which they directed Ameren Transmission Company of Illinois (“ATXI”) to “indicate in a filing with the Chief Clerk’s Office no later than May 7, 2013 whether [ATXI] is willing to withdraw its request for expedited consideration of its petition initiating this docket.” (Notice of ALJ Ruling, p. 1 (May 3, 2013).) This ruling was predicated upon the ALJs “having received the testimony of dozens of witnesses setting forth the advantages and disadvantages of numerous route variations” and “the attention to detail necessary to properly evaluate the alternatives.” *Id.* This brief responds to the ALJs’ directive.

RESPONSE

ATXI is not willing to withdraw its application under the expedited procedures of Section 8-406.1 of the Act. 220 ILCS 5/8-406.1. There are several reasons why such a withdrawal is not appropriate.

First, withdrawal of the application raises legal, procedural and practical issues; it would require a new or re-noticed proceeding that would present the same concerns as the instant

proceeding, namely “dozens of witnesses setting forth the advantages and disadvantages of numerous route variations,” while requiring the parties in current case to incur the time and expense associated with another case.

Second, regardless of the intended procedural mechanism, withdrawal of the application would lead to significant delay, which would put at risk the in-service dates for portions of the Project and thus present reliability concerns.

Third, the number of route variations at issue in the case has narrowed substantially over the course of the proceeding, leaving only a handful of options. Extending the procedural schedule could easily undo parties’ efforts to compromise on alternative route proposals.

1. Re-filing Would Result in Significant Procedural and Practical Concerns.

The ALJs’ directive does not identify a legal or procedural mechanism under which ATXI could “withdraw its request for expedited treatment.” (Notice of ALJ Ruling, p. 1 (May 3, 2013).) Neither ATXI nor the Commission has the authority to waive the requirements of Section 8-406.1 with regard to the timing of this case. *See* 220 ILCS 5/8-406.1. Nor is there any provision in Section 8-406.1 for “withdraw[ing] [a] request for expedited consideration of its petition.” (Notice of ALJ Ruling, p. 1 (May 3, 2013).) If ATXI were to withdraw its current application, would ATXI then re-file under Section 8-406.1 of the Act, or under Section 8-406? It is unclear what the ALJs are asking ATXI to consider.

If ATXI re-filed its application under Section 8-406.1, it would be required to repeat the public meeting and notice process required by that Section. *See* 220 ILCS 5/8-406.1 (requiring a minimum of three pre-filing public meetings “no earlier than 6 months prior to the filing of the application”). Under the expedited statutory process, ATXI timely held a series of public open houses, providing the required notices throughout the affected communities. (*See* ATXI Ex. 4.0,

pp. 13-22; ATXI Ex. 4.1.) ATXI also conducted extensive stakeholder meetings beyond what was required by Section 8-406.1. *Id.* To simply set aside the public input and planning process, which has been ongoing for a year and a half, can only lead to a waste of time and resources, public confusion, and uncertainty as to whether the re-noticed proceeding was a continuation of ATXI's original proposal or an entirely new proposal.

Affected landowners have intervened in the current proceeding, and in some cases retained legal counsel to represent their interests. They would be required to continue to participate in a new, re-filed proceeding, and bear additional legal fees and costs in repeating appearances at status hearings, responding to motions, conducting the same discovery, making the same alternative route proposals, and submitting the same testimony. And the end result would be a situation in which numerous route proposals were still at issue, including many of the same routes at issue in the current proceeding. Meanwhile, the ALJs would be operating under the same statutory deadline for action.

If ATXI re-filed under Section 8-406, as opposed to Section 8-406.1, many of these procedural concerns would remain. At the very least, a re-filed petition under Section 8-406 would require new notice, a new docketed proceeding, and potentially a repeat of the same discovery and the same positions in testimonies, all involving many of the same landowners and stakeholders. This would again be redundant, resulting in an unnecessary expenditure of time and resources, public confusion, and uncertainty as to whether the re-noticed proceeding was a continuation of ATXI's original proposal or a new proposal. Parties would be required to continue to spend additional time and incur additional expense in litigating the second proceeding. There would no longer be any deadline for action, and so the timeline for

Commission action would be wholly open-ended. This would only exacerbate the risk of delay and reliability concerns that would occur with a re-filed proceeding.

To put this issue in its proper perspective, ATXI has proposed two routes for consideration. There is nothing in Section 8-406.1 that requires the Commission to consider additional routes. However, as has been their past practice, the ALJs invited intervenors to propose additional routes. (*See* Revision to Case Management Plan, pp. 1-2 (Jan. 25, 2013).) Intervenors proposed alternative routes in December and February. Intervenors finalized their routes on March 29, 2013 with the filing of their direct testimony. While ATXI takes no issue with the ALJs' rulings to allow intervenors' alternative route proposals, to suggest now that ATXI should remedy the problems caused by these additional alternative route proposals by agreeing to an extended schedule is unfair to ATXI.

And some would say, the process is working as it should. Other route alternatives have been suggested and good debate has ensued. ATXI and the parties, and ultimately the Commission, has the benefit of a number of route choices to consider.

2. Further Delay of the Proceedings May Lead to Reliability Concerns.

The timeframe for this proceeding has already been extended twice, for a total of over 130 days – once from the original 150 day statutory deadline (Notice of Commission Action (Nov. 28, 2012)) and a second time in conjunction with the ALJs' ruling that ATXI's petition was completely filed as of January 7, 2013. (Notice of Commission Action (Jan. 25, 2013).) Withdrawal from the expedited process would lead to further delay, which may put at risk the in-service dates for portions of the project and thus present reliability concerns. (*See* ATXI Ex. 2.4.) In particular, any delay in approval could place the 2016 in-service dates at risk for the River-Quincy, Quincy-Meredosia, Pana-Mt. Zion, and Sidney-Rising portions of the Project. (*Id.*) As

ATXI witness Mr. Dennis Kramer explains in his Rebuttal Testimony, with respect to the Pana-Mt. Zion portion, the sequencing of the construction of the Project line segments is very important. (ATXI Ex. 11.0, p. 10.) Delay could place the 2016 in-service date for this part of the Project at risk. This in turn could jeopardize the timely achievement of the reliability and other benefits of the Project and leave the Decatur area at risk. Without proper sequencing of in-service dates, temporary system overloads could occur, and could impact system operation. Thus, any further delay must be avoided. This is particularly true with any permanent exit from the expedited process, which would mean there was no date-certain by which Commission action could be expected, and thus no reliable estimated in-service date.

3. The Alternative Routes Remaining for Consideration Have Narrowed.

Finally, the “numerous route variations” at issue in the case have narrowed substantially, as discussed in the testimony of ATXI witness Ms. Maureen Borkowski, (ATXI Ex. 10.0, pp. 6-9) and reflected in the testimony and exhibits of ATXI witness Ms. Donell Murphy. (ATXI Exs. 13.0-13.9). ATXI does not find the number of route options to be problematic, and no reason to do so has been offered by the ALJs’ inquiry. As ATXI Exhibit 4.6 shows, ATXI originally considered dozens of potential routes. (ATXI Ex. 4.6.) These were narrowed through the public meeting process and ATXI’s routing study. (*See* ATXI Ex. 4.0, pp. 13-22.) ATXI presented a Primary and Alternate Route with its application on November 7, 2012. Intervenors made alternate route proposals on December 31, 2012 and February 13, 2013. These proposals were reviewed through discovery and addressed in testimony filed by intervenors March 29, 2013 and April 12, 2013. Staff has conducted a review of the proposals and made recommendations. (*See* Direct Testimony of Mr. Greg Rockrohr, pp. 19-52 (March 29, 2013).) ATXI has reviewed the proposals, including Staff’s recommendations, and attempted to address intervenor concerns

where feasible and appropriate, to arrive at its Rebuttal Recommended Routes set forth in its rebuttal testimony. (*See generally* ATXI Ex. 13.0.) ATXI has also entered into six stipulations, agreeing to support four routes that resolve issues of concern with certain interveners. (ATXI Ex. 10.2.) As a result of this process, the number of “route variations” that can appropriately be considered by the ALJs has narrowed to only a handful of options, as summarized below.

- River to Quincy: ATXI, N. Kohl Grocer and Matt Holtmeyer Construction have stipulated to a route that slightly modifies ATXI’s Alternate Route for this portion. (ATXI Ex. 10.2, pp. 24-30; Motion to File & Admit a Stipulation Between ATXI and Matt Holtmeyer Construction (April 29, 2013).) ATXI understands this stipulated route is not contested by any intervenor.
- Quincy to Meredosia: ATXI has endorsed Staff’s recommended hybrid of ATXI’s Primary and Alternate Routes. ATXI believes that use of the hybrid minimizes opposition. The only significant alternative to ATXI’s Primary, Alternate, or the hybrid route is ACPO’s Alternate 1 (which ATXI explains is not a viable option). (*See* ATXI Ex. 13.0, p. 14.)
- Meredosia to Ipava: ATXI has entered into a stipulation with The Nature Conservancy to address their concerns about a part of ATXI’s Alternate Route. (ATXI Ex. 10.2, pp. 13-23.) The Nature Conservancy has withdrawn support for its alternates. (*Id.* at pp. 15-16.) As a result, no significant alternatives to ATXI’s Primary and Alternate routes are now proposed for this portion. ATXI believes that the concerns of all interveners on this portion can be addressed by adoption of ATXI’s Rebuttal Recommended Route.
- Meredosia to Pawnee: ATXI has entered into a stipulation with Morgan and Sangamon County Landowners and Tenant Farmers (“MSCLTF”) (ATXI Ex. 10.2, pp. 1-6) and

FutureGen (ATXI Ex. 10.2, pp. 7-12) to support ATXI's Alternate Route. As a result, no significant alternatives to ATXI's Primary and Alternate Routes are now proposed for this portion. Use of ATXI's Alternate Route would resolve the concerns of other parties on the Primary Route.

- Pawnee to Pana: ATXI has endorsed Staff's recommendation to adopt ATXI's Second Alternate route for this portion. No significant alternatives to ATXI's Primary, Alternate and Second Alternate route have been proposed for this portion.
- Pana to Mt. Zion: The only significant alternative to ATXI's Primary and Alternate route proposed for this portion is the Assumption Group Route 51 route (which ATXI explains is not a viable option). (*See* ATXI Ex. 13.0, p. 49.) ATXI acknowledges that MCPO has proposed an alternate route that goes directly from Pana to Kansas.
- Mt. Zion to Kansas: The only significant alternative to ATXI's Primary and Alternate route proposed for this portion is the MCPO Potential Alternate 1 (which ATXI explains is not a viable option). (*See* ATXI Ex. 13.0, p. 53.)
- Kansas to State Line: ATXI and Stop the Power Lines Coalition, Tarble Limestone Enterprises, JDL Broadcasting, Inc., Intervenor Paul Thrift and John Thompson, and the Edgar County Intervenor have agreed to enter into a stipulation to support ATXI's Alternate Route for this portion. (ATXI Ex. 10.2, pp. 31-38.) STPL has agreed to withdraw support for its alternate route proposals. (*Id.* at 34.) As a result, no significant alternatives to ATXI's Primary and Alternate routes are now proposed for this portion.

Thus, significant alternatives to ATXI's Primary and Alternate routes are now at issue for only three of the eight portions of the Project.

Furthermore, there are numerous parties that affirmatively support either the ATXI Primary or Alternate Routes, indicating that, for the majority of the portions of the Project, the ALJs' choice is limited to two potential routes. Such parties include: N. Kohl Grocer (ATXI Ex. 10.2, pp. 24-30), Matt Holtmeyer Construction (Motion to File & Admit a Stipulation Between ATXI and Matt Holtmeyer Construction (April 29, 2013)), Wiese Farms (Response to Ameren Motion to Strike Certain Intervenor's Untimely Alternate Route Proposals (April 22, 2013)), The Nature Conservancy (ATXI Ex. 10.2, pp. 13-23), Korsmeyer Family Farm Trust (Direct Testimony of Gerald Korsmeyer on behalf of Korsmeyer Family Farm Trust, p. 2 (March 29, 2013)), FutureGen (ATXI Ex. 10.2, pp. 7-12), Robinette Family (Direct Testimony of Andrew Robinette, p. 2 (March 29, 2013)), MSCLTF (ATXI Ex. 10.2, pp. 1-6), Pearce Family (Direct Testimony of Gregory & Theresa Pearce, p. 7 (March 29, 2013)), Coalition of Property Owners and Interested Parties in Piatt, Douglas and Moultrie Counties (Direct Testimony of Mary D. Burns on Behalf of PDMC, p. 3 (March 28, 2013)), John Richard Reed (Direct Testimony of John Richard Reed, p. 1 (March 28, 2013)), Tarble Limestone Enterprises (ATXI Ex. 10.2, pp. 31-38.), JDL Broadcasting, Paul Thrift (*Id.*), John Thompson (*Id.*), Edgar County Intervenor (*Id.*), Stop the Power Lines (*Id.*), Champaign (Corrected Direct Testimony of Bruce A. Knight, p. 3 (May 3, 2013)), Colfax-Scott Land Preservation Group (Rebuttal Testimony of Deborah D. Klein on behalf of Colfax-Scott Land Preservation Group, p. 2 (April 12, 2013)), and the Ragheb Family (Rebuttal Testimony of Dr. Magdi Ragheb on behalf of the Ragheb Family, p. 2 (April 12, 2013)).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Albert Sturtevant, an attorney, certify that on May 7, 2013, I caused a copy of the foregoing *Brief in Response to the Administrative Law Judge Ruling of May 3, 2013* to be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0598.

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